

REMARKS

In the Non-Final Office Action dated March 6, 2006, claims 1-63 are pending and stand rejected. In particular, claims 1-4, 9-14, 17, 19-22, 24, 26-28, 31, 33-38, 40, 43-48, 51, 53, 54, 57-59, and 63 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,911,003 to Anderson et al (Anderson). Claims 1, 8, 13-16, 19, 27-30, 33, 42, and 47-50 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 5,152,749 to Giesy et al (Giesy). Claims 1, 2, 5, 7, 13, 18, 19, 20, 13, 25, 27, 32, 33, 36, 39, 41, 47, and 52 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,691,711 to Raz et al. The Action rejects claims 55, 56, 60-62, and 64 are rejected under 35 U.S.C. §103(a) "over Anderson over Petros." Applicants address this as if the Examiner intended to assert that these claims are rejected over Anderson in view of Petros.

Applicants amend claim 1 to recite that the distal end of the shaft includes a substantially straight portion bent at an angle relative to an adjacent portion of the shaft, and also amend claim 1 to recite that the substantially straight portion has a length that is less than about 10% of the entire length of the shaft. Applicants similarly amend independent claims 19, 33, 53, and 58. Applicants amend claims 4-8, 21-25, and 37-42 for matters of form. The amendments are supported in the specification and figures and no new matter is added.

The pending claims distinguish over Anderson

The Action rejects claim 1 over Anderson. Claim 1 relates to a delivery device for delivering an implant to an anatomical site, comprising a handle and a shaft. More particularly, claim 1 recites a handle, and a shaft having proximal and distal ends and shaped to describe a plurality of curves substantially in a single plane along its length, the proximal end of the shaft being attached to the handle, wherein the distal end of the shaft includes a substantially straight portion bent at an angle relative to an adjacent portion of the shaft, and the substantially straight has a length that is less about 10% of the entire length of the shaft.

Applicants assert that Anderson does not describe this subject matter in connection with the shaft 60 of Figure 2. In particular, the shaft 60 describes linear portions oriented at angles with respect to each other, and therefore does not describe a plurality of curves. In fact, at column 9, lines 32-39, Anderson recites: "Preferably, the needle 60 comprises three substantial

linear portions 60A, 60B and 60C; each situated at an angle relative to the other linear portions.” Thus, Applicants request reconsideration and withdrawal of the rejection over Anderson of this claim. Independent claims 33 and 53 describe similar subject matter, and claims 2-4, 6, 9-14, 17, 34-38, 40, 43-48, 51, 54, and 57 depend from independent claims 1, 33, and 53 and add limitations thereto. Thus, Applicants request reconsideration and withdrawal of the rejections over Anderson to these claims.

The Action rejects claim 19 over Anderson. Amended claim 19 relates to a delivery device for delivering an implant to an anatomical site in a body of a patient, the device comprising, a handle, and a shaft having proximal and distal ends, the proximal end being connected to the handle and the distal end including a substantially straight portion bent at an angle relative to an adjacent portion of the shaft, wherein the substantially straight portion has a length that is less than about 10% of the entire length of the shaft. Applicants have reviewed the cited figures and associated disclosure of Anderson and find no teaching or suggestion of a substantially straight portion bent at an angle relative to an adjacent portion of the shaft and having a length less than about 10% of the entire length of the shaft. Thus, Applicants request reconsideration and withdrawal of the rejection over Anderson of this claim. Amended independent claim 58 also recites a substantially straight portion bent at an angle relative to an adjacent portion of the shaft and having a length less than about 10% of the entire length of the shaft, and claims 59 and 63 depend therefrom. Thus, Applicants request reconsideration and withdrawal of the rejections over Anderson to these claims.

The pending claims distinguish over Giesy

The Action rejects claim 1 over Giesy. As noted above, amended claim 1 includes the feature of a substantially straight portion bent at an angle relative to an adjacent portion of the shaft. The Action asserts that Giesy teaches a delivery device in connection with Figure 7 having a distal end including a substantially straight portion 20f bent at an angle relative to the shaft 20e. Applicants submit that the substantially straight portion 20f is not bent at an angle relative to the distal end portion 20e of the needle 20. Instead, the substantially straight portion 20f is oriented at an angle with respect to the central length portion 20c (see the 65 degree angle depicted in Figure 7 of Giesy) of the needle 20. Since the substantially straight portion 20f is not

adjacent to the central portion 22c, Giesy fails to disclose a substantially straight portion bent at an angle relative to an adjacent portion of the shaft as recited in claim 1.

Amended independent claims 19 and 33 also recite a substantially straight portion bent at an angle relative to an adjacent portion of the shaft. Claims 8 and 13-16 depend from claim 1, claims 27-30 depend from claim 19, and claims 42, and 47-50 depend from claim 33. Therefore, Applicants request reconsideration and withdrawal of the rejections over Giesy of these claims.

The pending claims distinguish over Raz

The Action rejects claim 1 over Raz. As mentioned above, claim 1 includes a substantially straight portion bent at an angle relative to an adjacent portion of the shaft. In its rejection of claim 19, the Action asserts that Raz describes this subject matter in connection with the distal end of the tube 28 of Figure 8a.

Applicants disagree. Applicants reviewed the disclosure of Raz and found no indication that the distal most portion of the tube 28 is intended to be "straight." In fact, at column 3 line 50, the tube 28 is described as "a curved anchor deployment tube." Therefore, we believe the Examiner to be relying on the drawing of Figure 8a alone in its rejection. However, "drawings and pictures can anticipate claims if they clearly show the structure which is claimed. *In re Mraz*, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972)" (MPEP 2125). As Applicants interpret Figure 8a, the distal most portion of the tube 28 is a part of a curve and does not include a substantially linear portion. Thus, the tube 28 does not meet the standard set forth in *In re Mraz* to clearly show the structure which is claimed. Accordingly, Applicants request reconsideration and withdrawal of the rejection over Raz to this claim.

Amended independent claims 19 and 33 also recite a substantially straight portion bent at an angle relative to an adjacent portion of the shaft. Claims 2, 5, 7, 13, and 18. depend from claim 1, claims 20, 23, 25, 27, and 32 depend from claim 19, and 36, 39, 41, 47, and 52 depend from claim 33. Thus, Applicants request reconsideration and withdrawal of the rejections over Raz to these claims.

Rejections under §103

The Action rejects claims 55, 56, 60, 61, 62, and 64 under §103 over Anderson in view of Petros. These claims depend from independent claims 53 and 58 and add limitations thereto. As noted above, amended claims 53 and 58 distinguish over Anderson. Applicants have reviewed the cited portions of Petros, and found no indication that they cure the deficiencies of Anderson. Therefore, Applicants submit that claims 53 and 58 along with dependent claims 55, 56, 60-62, and 64 are allowable over the cited references and Applicants request withdrawal of the §103 rejections to claims.

In view of the above amendments and remarks, Applicant believes the pending application is in condition for allowance.

Application No. 10/642397
Amendment dated August 9, 2006
Reply to Office Action of March 6, 2006

Docket No.: MIY-P02-024

Please charge our Deposit Account No. 18-1945 in the amount of \$1,020.00 covering the fees set forth in 37 CFR 1.17(a)(3). The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 18-1945, under Order No. MIY-P02-024.

Dated: August 9, 2006

Respectfully submitted,

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